JUDGE'S WORDS GIVE LEO FRANK NEW HOPE

Attorneys Hold That Roan's Ex- pressed

Doubt Will Make Rehearing Assured.

Attorneys for Leo M. Frank Tuesday made the declaration that the Supreme Court of Georgia could avoid giving their client a new trial only by upsetting a well-established precedent and by reversing every Supreme Court decision which has borne on the trial judge's duty to set aside a verdict of guilty for which he is not convinced there was sufficient warrant.

Roan's Position Clear.

"Judge Roan went out his way to make his stand in the matter perfectly clear. He mentioned that the case had given him much concern and worry—more than any other case over which he had presided. He then made his important declaration that, although he had listened to the evidence and arguments for 20 days, he was not yet convinced of the man's innocence or guilt."

"The law, as interpreted by the Supreme Court, clearly lays down the principle that the judge has responsibility in the matter and can not shift every ounce of the burden onto the shoulders of the jurors. Judge after judge virtually has been reprimanded for evading his duty in this respect."

Attorney Arnold mentioned a number of cases illustrating his point. In the case of Livingstone vs. Taylor, 132 Georgia, the Supreme Court enunciated the principle in these words, quoting in part from a previous decision in the case of Rogers vs. the State, 101 Georgia:

"From the tenor of his order his honor seems to have been of the impression that if there was evidence to support the verdict, he was not authorized to set it aside. This view is erroneous."

Gives Judge Discretion.

From this point the decision in the Rogers case is cited:

“The law confers upon trial judges a discretion in granting or refusing new trials in cases where the verdict is alleged to be contrary to evidence or without evidence to support it, and imposes upon them the duty or exercising this discretion. This court will not allow a conviction of a crime founded upon weak, unsatisfactory and doubtful evidence to stand, when the record discloses strong reason for believing that the judge below was not himself fully satisfied with the findings of the jury.”

In the Rogers case, the trial judge’s remark in denying the new trial was: “There probably being sufficient evidence to authorize the verdict of the jury, the motion is overruled and a new trial refused.”

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MORE ABOUT JURY TRIALS

Editor The Georgian:

I have read your editorial in Saturday’s issue on Judge Roan’s remarks in the Frank case with a good deal of interest and some astonishment. The standard you propose in criminal cases would destroy our system of jury trials, and substitute therefore ABSOLUTE KNOWLEDGE by the COURT before a conviction could stand. This would let a large majority of criminals go scot-free, and there would be no use for juries.

You say you want Frank to hang, WHEN ALL DOUBT IS REMOVED, but this is not possible in cases of circumstantial evidence, and is not the standard fixed by law in this or any other

civilized country. The jury must be satisfied to a moral and reasonable certainty, and beyond a REASONABLE DOUBT, but the judge is not so required.

The jury watches the evidence to ascertain what it PROVES while the judge watches it only to see that it is ADMISSIBLE.

Under these circumstances, it is to be expected that the jury will know more about the proof than the court, for that responsibility is on them, while the construction of the law is on the court.

When you reduce convictions to cases of ABSOLUTE CERTAINTY, and requires ALL DOUBT to be removed, you simply take the bridle off and open the door for every species of crime.

JOHN AWTREY.

Marietta, Ga.